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UNITED STATES PATENT AND TRADEMARK OFFICE
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Trademark Trial and Appeal Board
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In re Quality Mapping Solutions L.C.
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Serial No. 75/346,850
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Andrew R. Basile of Young & Basile, P.C. for Quality Mapping Solutions L.C.

Cheryl L. Steplight, Trademark Examining Attorney, Law Office 103 (Michael A. Szoke, Managing Attorney).
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Before Seeherman, Hairston and Chapman, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Quality Mapping Solutions, L.C. has filed an application to register the mark QMS for computer software, namely software used to manage quality systems for the purpose of certification of private, business and governmental entities according to national and international quality.[1]

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[1] Serial No. 75/346,850 filed August 26, 1997, asserting a bona fide intention to use the mark in commerce. While the application also covers "computer software maintenance" services, these services are not involved in the appeal.

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that, when used in connection with applicant's computer software, the mark QMS is merely descriptive thereof. Registration also has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used in connection with its computer software, so resembles the mark set forth below,

for "quality assessment, testing, and analysis of the business practices of others for the purpose of certification according to international quality standards and the evaluation of the quality assurance programs of others."[2]

We turn first to the issue of mere descriptiveness. Applicant contends that the mark QMS is simply an acronym

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[2] Registration No. 2,105,098, issued October 14, 1997.

for its name, Quality Mapping Solutions; and that at most,

the mark is suggestive of applicant's computer software

which enables businesses to more easily prepare records for

submission to an accrediting entity for certification of

their businesses according to national and international

quality standards. Applicant argues that its software is

used by businesses to help acquire certification and is not

a certification system per se.

The Examining Attorney, on the other hand, argues

that:

> The mark QMS immediately describes the function,
> purpose, and use of the [applicant's] software.
> It operates as a QMS or QUALITY MANAGEMENT
> SYSTEM for business and governmental entities.

In support of her position, the Examining Attorney

made of record an excerpt from the <u>Acronyms, Initialisms &</u>

<u>Abbreviations Dictionary</u> 22nd ed. (1997) which identifies

QMS as, inter alia, Quality Management System. In

addition, she submitted a few excerpts from the

NEXIS data base which refer to QMS, the following of which

are representative:

> The Registrar Accreditation Board (RAB) has announced
> three revisions to its quality management systems
> **(QMS)** auditor certification program requirements
> that will affect both RAB-certified auditors and
> future applicants. (<u>Quality Progress</u>, December
> 1996);

> Our quality management systems **(QMS)** are additional examples of our team approach. **QMS** involves employees finding ways to improve quality through statistical analysis. (<u>American Metal Market</u>, August 19, 1994); and
>
> **QMS** is our computerized quality management system. **QMS** is fully networked and we currently have around a hundred dotted about the factory. (<u>Gas World International</u>, November 1992).

A mark is merely descriptive if it forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods or services. In re Abcor Development Corp., 616 F.2d 525, 200 USPQ 215 (CCPA 1978). Moreover, in order to be descriptive, the mark must immediately convey information as to the ingredients, qualities or characteristics of the goods [or services] with a "degree of particularity." Plus Products v. Medical Modalities Associates, Inc., 211 USPQ 1199, 1204-05 (TTAB 1981).

In this case, we are not persuaded by the evidence of record that QMS is merely descriptive of applicant's identified computer software. While it appears from the evidence of record that Quality Management System, or QMS, describes a system employed by a business to assure the quality of its processes or operations, applicant's identified computer software is not such a "system." Neither is applicant's computer software the type which

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would be used by entities or organizations charged with

certifying businesses' quality management systems. We

agree with applicant that customers will view the mark QMS,

at most, as simply suggesting that applicant's computer

software aids businesses in preparing their records for

submission for certification of their businesses according

to national and international standards.

   We turn then to consideration of the refusal to

register under Section 2(d) of the Trademark Act.

Applicant maintains that there is no likelihood of

confusion because the marks are different in appearance and

its computer software and the registrant's assessment,

testing and analysis services are not related.

   The Examining Attorney, on the other hand, argues that

applicant's mark is identical to the letter portion of the

registrant's mark; that the goods and services are similar

because they "both provide [customers] with certification

of quality systems based on international standards"; and

that the goods and services would travel in the same

channels of trade to the same customers.

   Our determination under Section 2(d) of the Trademark

Act is based on an analysis of all of the probative facts

in evidence that are relevant to the factors bearing on the

likelihood of confusion issue. In re E. I. DuPont de

Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In
any likelihood of confusion analysis, two key
considerations are the similarities between the marks and
the similarities between the goods and/or services.
Federated Food, Inc. v. Fort Howard Paper Co., 544 F.2d
1098, 192 USPQ 24, 29 (CCPA 1976).

     With respect to the marks, we recognize that
applicant's mark consists of the same letters which appear
in registrant's mark. However, when we consider the marks
in their entireties, and particularly the visual impact of
registrant's mark, there are specific differences between
applicant's QMS mark and registrant's QMS and design mark.
The letters QMS are displayed in an unusual manner in
registrant's mark, with each letter in a separate block
making up a square such that they may not necessarily be
perceived by prospective customers as the acronym "QMS".
Also, registrant's mark includes a prominent design
consisting of crossed lines and a check mark in a square.
This results in a mark that, when considered in its
entirety, is different in overall commercial impression
from applicant's mark.

     We should add that to the extent that the cited mark
is perceived as QMS, these letters have a suggestive
significance with respect to registrant's services. As a

result, the scope of protection to be accorded the mark is more narrow than an arbitrary or fanciful mark.

Insofar as the goods and services are concerned, while we note that both involve quality standards, there are nonetheless specific differences between applicant's computer software, on the one hand, and registrant's quality assessment, training and analysis services, on the other hand. In particular, applicant's software would be used by individual businesses in preparing for certification of their businesses according to certain quality standards, whereas the registrant actually conducts quality assessment, testing and analysis of individual businesses.

In view of the cumulative differences between the marks and the involved goods and services, we find on this ex parte record that there is no likelihood of confusion.

Decision: The refusals to register under Sections 2(e)(1) and 2(d) are reversed.